

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

REMARKS

Reconsideration and allowance of this application are respectfully requested in view of the above amendments and the following remarks.

By this amendment, claim 3 has been canceled without prejudice or disclaimer of its subject matter and claims 1-2 and 4-22 have been amended. No new matter has been added by these amendments. Upon entry of this Amendment, claims 1, 2 and 4-22 will be pending in this application.

The amendments to the claims clarify the role of the agent that collects the data.

Canceled claim 3 recited that the data was collected by a data collection agent (DCA). This claim has been subsumed into independent claim 1 and a definition of a DCA from the specification has been included in the claim. Specifically, claim 1 has been amended to clarify that the collecting and measuring takes place at a data collection agent (DCA), "*a DCA being a computer operating on the Internet and configured with software that is controlled remotely from another location*". The claim further clarifies that the collecting of page object-level data is done "*responsive to a request from another location.*" The measured information is then sent back to the location that made the request. Support for this amendment is found, e.g., in the application as filed, e.g.:

The second component of the system actually takes the measurements and provides the measurement data needed by the user interface to report the performance characteristics. The measurement collection component comprises at least one Data Collection Agent (DCA). *A DCA is a computer operating on a network and configured with software that is controlled remotely from another location on the network to locate a particular web page using the URL of the web page and to download the files that make up the web page using HTTP during which the time required to download each file is measured, recorded and transmitted back to the remote location that requested the download.*

Pg. 19, lines 3-11 (emphasis provided).

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

Independent claims 9 and 10 have been similarly amended. Claim 9, as amended, recites “at least one data collection agent (DCA) connected to said computer network and configured with software that is controlled remotely from another location on the network” and clarifies that the software collects data in response to a request from the other location and then sends the measurement data back to the location that requested the download. Claim 10, as amended, clarifies that “each of the DCAs configured with software that is controlled remotely from another location on the network.”

The Examiner rejected claims 1-9 under Section 102(e) as being anticipated by Sathyanarayan et al (U.S. Patent No. 6,304,904). The Examiner rejected claims 10-22 under Section 103(a) as being unpatentable over Sathyanarayan. The grounds for these rejections are respectfully traversed.

As amended, the claims clarify that the data are collected by the data collection agents (DCAs) in response to requests from remote (other) locations on the network. The DCAs then send the resulting collected measurement data to the requesting locations.

In Sathyanarayan, a so-called network device (reference 1 in Fig. 1) is “configured to service requests from a plurality of other devices 10 coupled thereto.” C2L12-16. Sathyanarayan’s system acts as a go-between between a requesting device and a serving device. So, e.g., Sathyanarayan’s network device may be “a firewall or other type of network proxy, a content server or other network server, or a client device including a local proxy.” C2L16-18. “[N]etwork device . . . may independently service requests received from other devices. . . , or may forward such requests to upstream devices . . . for service. In the latter case, network device . . . would typically receive a response from the upstream device and forward that response . . . to the requesting other device.” C2L27-33.

In other words, in Sathyanarayan, a proxy devices request an object (directly or on behalf of a requesting entity) and provides that object to the requesting entity. The device also collects measurement data, but this data is not what is provided to the requesting entity. The

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

measurement data in Sathyanarayan is not collected on behalf of users, and the data are not provided to users. In the presently claimed invention, on the other hand, the DCAs collect data in response to user requests.

So, e.g., in Sathyanarayan if a user requested “*http://www.uspto.gov*”, the network device would get that web page, provide that page to the requestor and the device would make some measurements. In the present invention, on the other hand, a user would not actually want to see the web page “*www.uspto.gov*”, instead the user would want to know, e.g., information about how well that page is served. The user would request the DCA (or DCAs) to load that page. The DCA(s) would load the page, measure and determine information related to those downloads and then provided the measurement information back to the requestor. Such a system allows web site owners and / or operators monitor performance of their sites, even if they do not host their sites.

Applicant further respectfully submits that the Examiner has not made a *prima facie* case of obviousness under § 103. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference in order to achieve the claimed invention. Second, there must be a reasonable expectation of success, and third, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion and the reasonable expectation of success must both be found in the prior art, and not based on applicants disclosure. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

Applicant respectfully submits that there is nothing in Sathyanarayan to teach or in any way suggest the claimed invention. Sathyanarayan is silent about collecting measurement data, as claimed, and then reporting that data to the requestor.

The supposed motivation to modify Sathyanarayan is based entirely on impermissible hindsight. For example, as to claim 10, the Examiner acknowledges that Sathyanarayan does “not explicitly teach a system for performance monitoring an analysis of web pages from a server through a global computer network comprising: a plurality of agents located at distributed

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

points throughout said global computer network.” Applicant agrees. However, the Examiner then states that:

“it would have been obvious . . . to use a plurality of agents at distributed pitns throughout said global computer network incorporate [sic] with the method of Sathyanarayan et al *because doing so would have made the system for performance monitoring and analysis from a web server through a global network more efficient and utilizable*”

Paper No. 11, pg. 5, emphasis provided.

First, this apparent motivation presupposes the rejection itself. I.e., it incorrectly presupposes that Sathyanarayan teaches the single agent version of the invention. Second, although the Examiner notes that “[d]uplicate parts for multiple effects are generally not given patentable weight,” applicant respectfully submits that in this case the placement of multiple agents around a network in order to obtain data about the performance of the network would not have been obvious.

Further as to claims 11-22:

Applicant respectfully submits that there is nothing in Sathyanarayan to teach or in any way suggest the claimed system including any means or any mechanism constructed and adapted to **determine**:

- the time for a customer to view a Web page (as recited in claim 11); or
- a customer’s experience by time of day and day of the week (as recited in claim 13);
or
- a the origination of Internet-related performance problems (as recited in claim 14); or
- website performance improvements (as recited in claim 21); or
- vendor weaknesses contributing to poor website performance (as recited in claim 22).

There is nothing in Sathyanarayan to teach or in any way suggest the claimed system including any means or any mechanism constructed and adapted to **measure** variations a

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

website's performance by regional location or the network connectivity of the end-user (as recited in claim 12).

There is nothing in Sathyanarayan to teach or in any way suggest the claimed system including any means or any mechanism constructed and adapted **compare** a download performance compared to industry standards or competitive websites (as recited in claim 15).

There is nothing in Sathyanarayan to teach or in any way suggest the claimed system including any means or any mechanism constructed and adapted **monitor**:

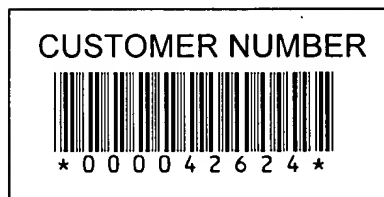
- download performance changes since the last hardware/software/design in investment to the website (as recited in claim 16); or
- access refusals due to traffic overload (as recited in claim 17); or
- the rate that incomplete pages served (as recited in claim 18); or
- performance over time to obtain performance trends as to whether website access is getting better or worse over time (as recited in claim 19); or
- performance in relation to performance thresholds such as corporate goals and acceptable levels (as recited in claim 20).

The Examiner has shown no teaching of any of these elements in Sathyanarayan alone or in combination with any other cited art. The entire rejection these claims has been made in an unsupported manner (Paper No. 8, item 16). The Examiner simply lists the claim elements and concludes that Sathyanarayan teaches them, citing portions of Sathyanarayan (the abstract, col. 4, lines 26 to col. 7, line 34 and col. 8, lines 5-51). Applicant respectfully submits, however, that nowhere does Sathyanarayan teach or in any way suggest the inventions of claims 11-22. If the Examiner sustains his rejection of these claims, the Examiner is respectfully requested to show exactly in Sathyanarayan where each of the recited claim elements is taught. The Examiner is reminded that the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. This burden has not been met.

Appln. of: ROBERTSON, Niel et al.
Serial No.: 09/603,174
Filed: June 23, 2000

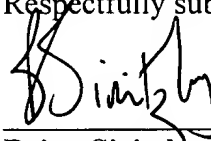
In view of the foregoing amendments and the following remarks, allowance of this case is earnestly solicited.

The Examiner is invited to contact the undersigned at the number below should the Examiner believe that such a call will expedite allowance and issuance of this application.



Respectfully submitted,

By:



Brian Siritzky

Registration No.: 37,497
Davidson Berquist Jackson & Gowdey LLP
4501 N. Fairfax Drive; Suite 920
Arlington, VA 22203
Main: (703) 248-0333
FAX: (703) 248-9558